

109th CONGRESS  
1st Session  
**S. 309**

To amend the Internal Revenue Code of 1986 to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements.

**IN THE SENATE OF THE UNITED STATES**

**February 8, 2005**

Mr. DEMINT (for himself, Mr. Salazar, and Mr. Ensign) introduced the following bill; which was read twice and referred to the Committee on Finance

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**A BILL**

To amend the Internal Revenue Code of 1986 to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.**

(a) IN GENERAL- Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

` (h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS-

` (1) IN GENERAL- For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than \$500 of unused health benefits may be--

` (A) carried forward to the succeeding plan year of such health flexible spending arrangement, or

` (B) to the extent permitted by section 106(d), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the employee.

` (2) HEALTH FLEXIBLE SPENDING ARRANGEMENT- For purposes of this subsection, the term `health flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraphs (C) and (D) thereof).

` (3) UNUSED HEALTH BENEFITS- For purposes of this subsection, with respect to an employee, the term `unused health benefits' means the excess of--

` (A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement, over

` (B) the actual amount of reimbursement for such year under such arrangement.'.

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2004.